In re:

Case No. 04-45229-RJK Chapter 7

David Gawreluk and Pamela Gawreluk,

Debtor(s).

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

- TO: Debtor(s) and Attorney for Debtor(s); Dorraine A. Larison, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.
- 1. Bank One Wisconsin, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.
- 2. The Court will hold a hearing on this motion at **2:00 pm** on **Thursday, October 28, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.
- 3. Any response to this motion must be filed and delivered not later than Monday, October 25, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, October 19, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
- 4. This motion arises under 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Bank One Wisconsin seeks relief from the automatic stay of 11 U.S.C. § 362 with respect to certain personal property owned by Bank One Wisconsin.

- 5. The petition commencing this Chapter 7 case was filed on September 17, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.
- 6. Bank One Wisconsin owns and leases to Debtor(s) a 2002 Jeep Liberty, vehicle identification number 1J4GL58KX2W153049 (the "Vehicle").
- 7. Copies of Bank One Wisconsin's agreement with Debtor(s) (the "Lease") and the Title Documents are attached hereto as Exhibits A and B and incorporated herein by reference.
- 8. Payments due under the terms of the Lease for the months of August through September 2004, totaling \$1,287.53 plus late charges, have not been made by the Debtor(s).
- 9. No evidence has been provided to verify insurance coverage on the Vehicle. The balance due under the Lease is \$22,010.87 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$17,750.00.
- 10. Bank One Wisconsin's interest is depreciating, while Debtor(s) are failing to make payments. Bank One Wisconsin does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.
- 11. The failure of the Debtor(s) to make payments pursuant to the Lease or otherwise provide Bank One Wisconsin with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicleconstitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Bank One Wisconsin to relief from the stay.

12. Bank One Wisconsin requests that any order modifying the automatic stay be effective

immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, T. Johnson, or some other

representative of Movant, will testify on behalf of Bank One Wisconsin.

14. This notice of motion and motion also serves as notice of default as may be required by

Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before

the hearing, Bank One Wisconsin will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION

OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Bank One Wisconsin respectfully moves the Court for an order (i) modifying the

automatic stay of 11 U.S.C. §362 so as to permit Bank One Wisconsin to terminate the Lease, take

possession and dispose of the vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule

4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable and (iii) granting such other

relief as may be just and equitable.

Dated: October 6, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt

Bradley J. Halberstadt (#215296)

Attorneys for Movant

430 Oak Grove Street, Ste. 200

Minneapolis, Minnesota 55403

(612) 870-4100

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In re:

Case No. 04-45229-RJK Chapter 7

David Gawreluk and Pamela Gawreluk,

Debtor(s).

VERIFICATION

1, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

Dated: 10/5/04

Tracy Johnson

Bankruptcy Specialist

Bank One Wisconsin

BANK ONE ARIZONA

Fax 1602-674-7194

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In re:

Case No.04-45229-RJK Chapter 7

David Gawreluk and Pamela Gawreluk,

Debtor(s).

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

Bank One Wisconsin submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Bank One Wisconsin owns and leases to Debtor(s) a 2002 Jeep Liberty with a vehicle identification number 1J4GL58KX2W153049 (the "Vehicle"). Payments due under the terms of the Lease for the months of August through September 2004, totaling \$1,287.53 plus late charges, have not been made by the Debtor(s). The balance due under the Lease is \$22,010.87 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$17,750.00. No evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Leases between the Debtor(s) and Bank One Wisconsin and Bank One Wisconsin has otherwise not been provided with adequate protection of interest in the Vehicle or adequate assurance of future performance under the Lease. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Bank One Wisconsin to relief from the stay. <u>United Savings Assn. of Texas v. Timbers of</u>

<u>Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.)</u>, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988). In Re Reinbold v. Dewey County Bank, 942 F. 2d 1304, 1306 (8th Cir. 1991)

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. <u>In re Albany</u>

Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$22,010.87 as of the date hereof. The fair market value of the Vehicle is approximately \$17,750.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization

CONCLUSION

For all the reasons set forth herein, Bank One Wisconsin is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to take possession of and terminate its lease regarding the Vehicle in accordance with Minnesota law.

Dated: October 6, 2004 Respectfully submitted,

STEWART, ZLIMEN & JUNGERS

		DISTRICT OF MINNESOTA
In re:		
David Gawreluk and Pamela Gawreluk		UNSWORN DECLARATION
Debtor(s).		FOR PROOF OF SERVICE
Bky. No. 04-45229-RJK		
with office address of 430 Oak Grove S set forth below, I served the annexed N entities named below by mailing to each	wart, Zlimen & Jungers, attorney(s) licer Street, Ste. 200, Minneapolis, Minnesota fotice of Hearing and Motion For Reli th of them a copy thereof by enclosing sang same in the post office at Minneapol	a 55403, declares that on the date of From Stay upon each of the ame in an envelope with first
United States Trustee Suite 1015 300 South 4th Street Minneapolis, MN 55415	(Attorney for Debtor(s)) Michael J. Iannacone 8687 Eagle Point Blvd Lake Elmo, MN 55042	(Trustee) Dorraine A. Larison 1010 W. St. Germain Rm 600 St. Cloud, MN 56301
(Debtor(s)) David Gawreluk 13018 Sixth Avenue Circle Zimmerman, MN 55398		
Pamela Gawreluk 13018 Sixth Avenue Circle Zimmerman, MN 55398		

Signed: ____/e/ Bradley J. Halberstadt

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: October 6, 2004

In re:		Case No. 04-45229-RJk
David Gawreluk and Pame Debtor(s).	ela Gawreluk,	Chapter 7 ORDER GRANTING MOTION FOR RELIEF FROM STAY
The above-entitled	matter came before the Cour	t for hearing on Thursday, October 28, 2004 on
the motion of Bank One W	Visconsin seeking relief from	the automatic stay of 11 U.S.C. §362.
Appearances were noted in	n the Court's record. Based u	pon the proceedings on said date, the statements of
counsel, and all of the files	s and records herein, the Cour	t now finds that cause exists entitling Bank One
Wisconsin to the relief req	uested.	
NOW, THEREFOR	RE, IT IS HEREBY ORDER	ED that the automatic stay of 11 U.S.C. §362 is
immediately terminated as	to Bank One Wisconsin, and	Bank One Wisconsin is authorized to terminate
its lease and take possession	on of the subject 2002 Jeep Li	berty, vehicle identification number
1J4GL58KX2W153049 in	accordance with Minnesota	aw. Notwithstanding Fed R. Bankr. P.
4001(a)(3), this order is ef	fective immediately.	
Dated:	_	
	Robert J. F United Sta	Kressel tes Bankruptcy Judge